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SUBJECT: SERBIA'S JUDICIAL REFORM PROCEEDS DESPITE CONTINUING
CONTROVERSY

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Summary

[11](#). (SBU) Serbia's National Assembly passed in late 2008 an ambitious judicial reform package in line with requirements in the 2006 Constitution, and the government immediately began the process of implementing the new laws. The laws are intended to increase judicial independence and efficiency and eliminate corruption. Although the draft legislation was modified before passage to address concerns raised during the public review process, there nevertheless remain many concerns about possible political influence, lack of transparency in reselection of judges for the entire system, and the difficulties presented by such massive change. Despite these concerns, the government appears to be proceeding in good faith, but needs to take the important step of educating the public before the benefits the new system can be realized. End Summary.

Status of Judicial Reform Package

[12](#). (SBU) The package of judicial reform legislation passed on December 22, 2008, after several modifications to address concerns expressed by civil society and the international community (Ref A). The package passed with little discussion in the National Assembly, with only the Democratic Party of Serbia (DSS) opposing. The government immediately began taking steps to implement the new system. It constituted in March 2009 the High Judicial Council (HCC) and High Prosecutorial Council (SPC), which will control the courts' and prosecutors' budgets and be responsible for hiring, firing, and disciplining judges and prosecutors. The Councils then developed criteria for selection of new judges and prosecutors for an entirely new court system, and the government submitted the draft criteria to the Venice Commission for comment. The government published a call in the official gazette for applications for the new court system July 15, which were due July [130](#). The two councils are now meeting to evaluate the applications from both sitting judges and prosecutors and new applicants. The new court system, with elected judges and prosecutors, must by law be in place by January 1, 2010.

13. (SBU) The changes the legislation brings are intended to bring greater judicial independence and efficiency, in line with European Union standards. There is a long-recognized need for reform after political interference in the judiciary during the Milosevic era. Public officials have repeatedly emphasized that the laws were aimed at removing corrupt judges and prosecutors and ensuring that future judges and prosecutors were high-caliber and under proper oversight. The courts will also be responsible for their own budgets and administration, making their operations less beholden to ministries run by politicians. Finally, officials note that a new court system and better personnel will also make trials more efficient and reduce case backlogs, shortening the time citizens receive justice and increasing confidence in the system.

Political Influence

14. (SBU) Concerns remain that the legislation will not produce a stronger, more independent judiciary. The original draft bills had specified criteria for election to the HCC and SPC and had a bottom-up approach, with judges and prosecutors selecting council members. The final legislation instead required the then-current High Judicial Council to nominate members of both organizations, whom the National Assembly then confirmed. After the councils were formed in April, OSCE Serbia Rule of Law and Human Rights deputy

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head Livio Sarandrea told us the new mechanism permitted political influence over the selection process. International Communication Partners (ICP), a consulting firm often critical of government policies, issued a report on October 23 echoing these concerns and added that if the goal was to eliminate a corrupt and inefficient system, the top officials of the existing system should not have been allowed to select their successors in the new system.

Judge Selection Constitutional and Fair?

15. (SBU) The draft bills and final laws were criticized for requiring a new selection of judges, forcing sitting judges to compete for their own jobs when the Constitution had given them a lifetime mandate. Justice Ministry Assistant Minister for European Integration and International Projects Dragana Lukic told us in June that there was no way to transfer existing judges to a completely new court architecture without a new selection, because the number of judgeships was reduced and there were no one-for-one equivalents in the new system. Justice Minister Snezana Malovic explained to us in May that the requirement was constitutional because current judges had been appointed and given lifetime mandates under the previous Constitution; since the 2006 Constitution called for the new HCC to elect them, they had to obtain a new permanent mandate. Justice State Secretary Slobodan Homen told us October 19 the selection process also was intended to weed out corrupt or incompetent judges and bring "new blood" into the courts.

16. (SBU) Speculation remains about what may happen to sitting judges who do not receive a new position. The Judges' Association of Serbia filed a lawsuit challenging the constitutionality of requiring the reselection. The Constitutional Court ruled it constitutional on July 9. Homen estimated that 500 or 600 sitting judges would be left without a position after the selection and would cease to be judges at that point. He predicted many would

file individual Constitutional Court challenges, but he anticipated the suits would be dismissed under a provision that civil servants could not sue the government. Homen noted the reselection was a one-time process -- after the initial selection, the HCC would fill new vacancies only with graduates of the soon-to-be-created Judicial Training Academy, who would have proven their merit by winning a spot at and graduating from the Academy.

17. (SBU) The selection criteria for new judges and prosecutors generated further controversy. The Justice Ministry submitted the criteria to the Venice Commission for review in March. In its June report, the Venice Commission expressed several concerns, including lack of specificity in evaluating judges' and prosecutors' competence and ethics, and it stated that it would be hard for the system to objectively determine who was corrupt and who was inept. The Venice Commission, however, concluded that otherwise the criteria were in line with European standards. The ICP report criticized the final criteria for not complying with the Venice Commission's recommendations. Although Homen told us the Venice Commission's concerns were addressed in the final version of the criteria that were published with the application call, several observers claimed that there was no discernible difference between the original and revised versions.

Lack of Transparency

18. (SBU) The councils began meeting to select new prosecutors and judges in September amid concerns about lack of transparency, especially with the judge selection. The Justice Ministry received over 5,000 applications for less than 2,000 judgeships, as many sitting judges applied for more than one position and there were new applicants as well. OSCE Serbia Rule of Law and Human Rights

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head Ruth Van Rhijn told us September 28 that she believed it was impossible for the councils to go through the applications and make choices before January 2010 without support staff, and she was unaware if the Justice Ministry had assigned any. ICP noted in its report that even if the HCC had worked through August, which it did not, it would have had only 10 minutes to consider each applicant. Van Rhijn said the short amount of time to consider applicants gave the appearance that the decisions had been "precooked." Even if that was not the case, the lack of transparency marred the process, Van Rhijn concluded. Homen told us that the councils were in fact staffed with the Justice Ministry's "best" staff and were on track to complete the selections in December.

Challenges of Setting up the New Court System

19. (SBU) The new laws vastly reduced number of courts, to save funds and correct previous imbalances in workload. According to the Justice Ministry, judges in some rural courts would hear a case or two a month while judges in the busiest courts in Belgrade each heard approximately 125 cases a year. The Law on Courts replaces the current 138 municipal courts with 34 Basic Courts. In order to address concerns about how far individuals would have to travel and the need for personnel who could understand the complex situation in areas with large minority populations, the final version of the law calls for the remaining 104 municipal courts to be converted into "court branches" with Basic Court judges riding circuit to conduct court business there periodically. Observers and sitting judges noted that case backlog could increase in the short term

since many cases would be assigned to a new judge who did not know the case and files might need to move to a new physical location. Acting Supreme Court President Nata Mesarovic told us in June that she believed it would take two to three years for the entire new court system to function effectively because the changes were radical.

Next Steps

110. (SBU) Despite concerns at the late start, the government is beginning to provide the administrative support for the councils and new courts and secondary, implementing legislation and regulations needed. The government prepared and the National Assembly began discussing on October 27 a package of new judicial laws, including a Law on the Constitutional Court, a Law on the Judicial Training Academy, a Law on Organization of the Courts requiring some violent crimes cases to be heard in higher courts, and some changes to the Laws on Judges and Prosecutors required by other new legislation. Homen told us that the European Bank for Reconstruction and Development in October had approved a \$75 million loan to the Justice Ministry to upgrade the current Palace of Justice (which houses the busy Belgrade District Court) in order to increase security, build two new prisons to ameliorate prison crowding and ensure that convicts served their sentences, and renovate buildings for the Justice Ministry and for prosecutors. The National Assembly also passed amendments to the Criminal Procedure Code and Criminal Code in August, and Homen said the government was on track to send the National Assembly a completely revised Criminal Procedure Code by the end of the year (Ref B).

Comment

111. (SBU) Although there are lingering concerns about the lack of transparency in the selection of judges and the huge task that the government has taken on, Serbia appears to be acting in good faith to implement a massive and unprecedented restructuring of the judiciary. If the government can overcome the hurdles, the reforms will result in real improvements such as putting the courts in

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charge of their own budgets. The most important question remaining is whether the reform results in increased citizen confidence in the judiciary. The real driver for the judicial reform process thus far has been EU accession aspirations, with less care given to explaining the changes to the public. The government has had several successes in 2009 in convincing the public of the need for changes, most notably on visa liberalization; we hope to see a similar burst of effort on judicial reform as the legislation nears its implementation date. End Comment.

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